

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEITH STANSELL, et al.

CASE NO.: 1:16-mc-00405-ALC

Judge Andrew L. Carter, Jr.

Plaintiffs,

vs.

REVOLUTIONARY ARMED FORCES OF COLOMBIA (FARC); et al.,

Defendants.

SUPPLEMENTAL JOINT STATUS REPORT

All parties who joined in the February 10, 2021 Joint Status Report [ECF No. 177], and non-party JP Morgan Chase Bank N.A. (“JPMCB”), now submit this Supplemental Joint Status Report pursuant to Your Honor’s February 12, 2021 Order [ECF No. 181] regarding the effect of 28 U.S.C. § 455(b)(4) on whether the Court’s recusal is necessary, and on whether JPMCB or The Bank of New York Mellon (“BNY Mellon”) is properly considered a party in either *Stansell* or *Pescatore*.

On December 23, 2020 and on January 8, 2021, the SDNY’s Orders and Judgment Clerk issued separate writs of execution, in both the *Stansell* and *Pescatore* actions, that were each directed in part to JPMCB. The writs of execution were served on JPMCB on December 30, 2020 and January 8, 2021, respectively, and JPMCB has not contested the method or propriety of service. The writs, by themselves, did not make JPMCB a party to either the *Stansell* or *Pescatore* action, and JPMCB, as discussed below, has not been made a party since then. As to BNY Mellon, no writs have been served on it, and no turnover motions have been filed as to any blocked accounts it holds. BNY Mellon has accordingly never been made a party in either *Stansell* or *Pescatore*.

Neither the *Stansell* nor *Pescatore* plaintiffs have ever filed a turnover motion directed to JPMCB, nor did they file any other motion, pleading or writ that required a substantive response or otherwise resulted in JPMCB becoming a party to either action. JPMCB's counsel filed an appearance in *Stansell* in mid-January, but only insofar as JPMCB was a garnishee of blocked accounts that had just become subject to writs of execution and might become the target of turnover motions. As to BNY Mellon, as noted, neither the *Stansell* nor *Pescatore* plaintiffs have ever moved for or obtained or levied any writ directed to BNY Mellon, and they have never filed any motion or pleading that required any response by BNY Mellon. BNY Mellon's counsel – the same firm that represents JPMCB – accordingly did not, and had no need to, file an appearance on BNY Mellon's behalf.

On January 29, 2021—prior to Your Honor's disclosures at the February 5, telephone conference—the *Stansell* and *Pescatore* plaintiffs released their judgment execution liens “from their December 16, 2020 writ of execution to JP MORGAN CHASE BANK . . . only, without prejudice.” *Stansell* ECF No. 163; *Pescatore* ECF 83. On February 8, 2021, the *Stansell* and *Pescatore* plaintiffs released their JPMCB execution liens and withdrew both writs to JPMCB. *Stansell* ECF No. 174; *Pescatore* ECF No. 90. Again, JPMCB and BNY Mellon were accordingly never a party in either *Stansell* or *Pescatore*.

The undersigned parties, including non-party JPMCB, have conferred regarding Your Honor's February 12, 2021 Order and it is our collective position that neither Your Honor's investment interest in JPMCB, nor Your Honor's spouse's position as in-house counsel at BNY Mellon, require Your Honor's recusal under 28 U.S.C. §455(b)(4). JPMCB and BNY Mellon are not parties in *Stansell* or *Pescatore*, and it does not appear that Your Honor's interests in JPMCB or BNY Mellon could be substantially affected by the outcome of the proceedings in

Stansell or *Pescatore* against Citibank, Sumitomo Mitsui Banking Corp., Equiniti Trust Company, the various blocked account owners, and interpleader Defendant Antonio Caballero (who reserves his right to challenge the venue of any of the aforementioned proceedings, including based upon the situs of the in rem blocked assets). We note that Caballero, who as of the time of this joint status report has served no writs of execution on JPMCB or BNY Mellon, has pending a turnover action in the Southern District of Texas against a claimed garnishee located in Texas that involves a blocked account held by JPMCB. Based on information provided by JPMCB to Caballero, JPMCB's and Caballero's respective counsel are in discussions regarding the transfer of that action to the SDNY, where the blocked account is located, or the withdrawal of the action and the commencement of a new action in the SDNY. But either way, the parties will act to ensure that the action does not get assigned to Your Honor so as to avoid any potential resulting conflict.

Respectfully submitted February 16, 2021

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